

TO: Präsident des Oberlandesgerichts Düsseldorf

1. SENDER:

Mark L. Whitaker  
MORRISON & FOERSTER LLP  
2000 Pennsylvania Avenue, NW  
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USA

2. CENTRAL AUTHORITY OF  
REQUESTED STATE:

Der Präsident  
des Oberlandesgerichts Düsseldorf  
Cecilienallee 3  
40474 Düsseldorf  
Germany

3. PERSONS TO WHOM THE EXECUTED  
REQUEST IS TO BE RETURNED:

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MORRISON & FOERSTER LLP  
2000 Pennsylvania Avenue, NW  
Washington, DC 20006-1888  
USA

Tharan Gregory Lanier  
JONES DAY  
555 California Street, 26th Floor  
San Francisco, CA 94104  
USA

4. DATE BY WHICH REQUESTING AUTHORITY REQUIRES RECEIPT OF THE  
RESPONSE TO THE LETTER OF REQUEST:

This Letter of Request is of an urgent nature as the discovery in this matter will close on January 15, 2021. Because less than a year remains in discovery, Teradata has no choice but to request the assistance of the German legal system to obtain this relevant information.

In conformity with Article 3 of the Hague Convention of 18 March 1970 on the Taking of Evidence Abroad in Civil or Commercial Matters (“the Hague Evidence Convention”), the undersigned Applicant has the honor to submit the following request:

5(a) REQUESTING JUDICIAL AUTHORITY:

The Honorable Joseph C. Spero  
United States Chief Magistrate Judge  
United States District Court for the  
Northern District of California  
San Francisco Courthouse  
450 Golden Gate Avenue  
San Francisco, CA 94102  
USA

(b) TO THE COMPETENT AUTHORITY OF: Germany

(c) CASE NAME AND NUMBER: TERADATA CORPORATION,  
TERADATA US, INC., and TERADATA  
OPERATIONS, INC. v. SAP SE, SAP  
AMERICA, INC., and SAP LABS, LLC,

Case No. 3:18-cv-03670

6. NAMES AND ADDRESSES OF PARTIES AND REPRESENTATIVES:

(a) Plaintiff 1: Teradata Corporation  
17095 Via del Campo  
San Diego, CA 92127  
USA

Plaintiff 2: Teradata US, Inc.  
17095 Via del Campo  
San Diego, CA 92127  
USA

Plaintiff 3: Teradata US, Inc.  
17095 Via del Campo  
San Diego, CA 92127  
USA

Counsel for Plaintiffs 1, 2, and 3: Mark L. Whitaker  
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G. Brian Busey  
Mary Prendergast  
Fahd H. Patel  
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Washington, DC 20006-1888  
USA

(b) Defendant 1: SAP SE  
Dietmar-Hopp-Allee 16  
Walldorf, 69190  
Germany

Defendant 2: SAP America, Inc.  
3999 West Chester Pike  
Newton Square, PA 19073

USA

Defendant 3:

SAP Labs, LLC  
3410 Hillview Avenue  
Palo Alto, CA 94304  
USA

Counsel for Defendants 1, 2, and 3:

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KLARQUIST SPARKMAN, LLP  
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Portland, OR 97204  
USA

## 7. NATURE OF THE PROCEEDINGS AND SUMMARY OF THE COMPLAINT AND COUNTERCLAIMS:

(a) Nature of the Proceedings. The proceeding for which Applicant requests oral testimony from the witnesses listed in Section 9 below is a civil action filed by Teradata Corporation, Teradata US Inc., and Teradata Operations, Inc. (collectively, “Teradata”) against SAP SE, SAP America Inc., and SAP Labs, LLC (collectively, “SAP”). This case is both civil and commercial in nature and does not involve the litigation of any issue arising under criminal law, domestic or family law, nor does it involve the recovery of any tax.

(b) Summary of the Complaint/Counterclaims. Teradata’s Complaint alleges claims for (i) trade secret misappropriation under U.S. Federal Law (18 U.S.C. § 1836, *et seq.*); (ii) trade secret misappropriation under California State Law (Cal. Civil Code § 3426, *et seq.*); (iii) copyright infringement under 17 U.S.C. § 501; (iv) Unlawful Tying under 15 U.S.C. §§ 1, 14; and (v) attempted monopolization under 15 U.S.C. § 2 through SAP’s alleged anticompetitive conduct directed at Teradata and alleged misuse of Teradata’s intellectual property. SAP’s Answer denies

these allegations, and SAP's Counterclaims allege claims for infringement of five SAP patents under 35 U.S.C. § 271 through Teradata's alleged use of SAP's intellectual property.

The case concerns enterprise software. The parties entered a joint venture in 2008 that allowed SAP's "Business Warehouse" product to use Teradata's "Teradata Database" product. In 2011, SAP released its own "HANA" product that competed with Teradata's product. Teradata contends that SAP used Teradata's intellectual property obtained through the joint venture to develop SAP's HANA product, and that SAP has sought to coerce customers to use the HANA product rather than the Teradata Database product in ways that violate United States antitrust laws. SAP contends that the Teradata Database product infringes SAP's patents.

During the joint venture, SAP contracted with Infolytics AG to develop software integrating SAP's Business Warehouse product with the Teradata Database product. Some Infolytics employees were given "@sap.com" email addresses, which SAP contends was a component of those employees' limited "contractor-user" level of access to SAP's network. The Infolytics employees who received SAP email addresses included Thomas Anhaus and Fekke Fekkes.

#### 8. EVIDENCE TO BE OBTAINED:

The requesting judicial authority respectfully requests the Central Authority of Germany to cause the witnesses Thomas Anhaus, Fekke Fekkes, Juergen Hoehe, Arthur Janowitz, Ralf Scheurer, and Gerhard Brunnbauer, and potentially other Infolytics AG employees and managers with relevant information, to appear and give testimony. Infolytics AG is the company for which witnesses Thomas Anhaus, Fekke Fekkes, Juergen Hoehe, Arthur Janowitz, Ralf Scheurer, and Gerhard Brunnbauer worked, at least during the Bridge Project. Such testimony is expected to be used as evidence at trial and is described in further detail in Section 10 below.

The requesting judicial authority has further determined the testimony sought herein may be taken for use at trial in lieu of a personal appearance by this witness. After reviewing the moving papers submitted in support of the motion for issuance of this Letter of Request, this Court is satisfied that the Letter of Request is necessary and convenient to produce evidence which will assist this Court in the resolution of certain issues to be decided during trial of the matter.

#### 9. IDENTITY AND ADDRESS OF PERSONS TO BE EXAMINED:

Thomas Anhaus  
Hesterstr. 23, 58135 Hagen  
GERMANY

Fekke Fekkes  
Bonner Strasse 484-486, 50968 Köln  
GERMANY

Juergen Hoehe  
Agrippinaufer 4, 50678 Köln  
GERMANY

Arthur Janowitz  
Weiherstr. 6, 52152 Simmerath  
GERMANY

Ralf Scheurer  
Homburger Str. 22, 50969 Köln  
GERMANY

Gerhard Brunnbauer  
Bonner Strasse 484-486, 50968 Köln  
GERMANY

**10. STATEMENT OF THE SUBJECT MATTER ABOUT WHICH THE WITNESS IS TO BE EXAMINED:**

It has been represented to this Court that the examinations of Thomas Anhaus, Fekke Fekkes, Juergen Hoehe, Arthur Janowitz, Ralf Scheurer, and Gerhard Brunnbauer, Infolytics employees and managers now residing in Germany, are necessary for the due determination of the matters in dispute between the parties. Teradata seeks to take the testimony of Thomas Anhaus on the central issues of alleged misappropriation of Teradata's trade secrets during the Bridge Project. Mr. Anhaus was a member of the "Project Steering SAP MaxDB Bridge" and the "MaxDB Kernel & Interfaces" teams during the Bridge Project. Mr. Anhaus was involved with developing a loading solution to transfer data from an SAP product to Teradata. Mr. Anhaus is alleged to have handled sensitive Teradata information, including source code, in developing this solution. Teradata also desires to take the testimony of Fekke Fekkes on the central issue of alleged misappropriation of Teradata's trade secrets during the Bridge Project. Mr. Fekkes was a member of the "Project steering SAP MaxDB Bridge" and the "BW Interface" teams during the Bridge Project. Mr. Fekkes was involved with testing the performance of the Bridge Project. Teradata also desires to take the testimony of Messrs. Hoehe, Janowitz, Scheurer, and Brunnbauer, who were all involved with the Bridge Project.

The scope of the requested evidence is specific to matters within Messrs. Anhaus's, Fekkes's, Hoehe's, Janowitz's, Scheurer's, and/or Brunnbauer's personal knowledge during their tenure with Infolytics and the work they did there on the Bridge Project. In particular, the requested testimonial subjects are these individuals' roles during the Bridge Project; alleged access to and handling of Teradata proprietary information; and the nature of Infolytics AG's relationship to Teradata in general, SAP in general, and SAP's BW and HANA in particular. The requested documents relate to the same.

**11. DOCUMENTS OR OTHER PROPERTY TO BE INSPECTED: Separate Letter of Request.**

**12 and 13. SPECIAL PROCEDURES REQUESTED PURSUANT TO ARTICLES 3 and 9 OF THE CONVENTION:**

General Procedures:

In the event the taking of evidence by the manner requested above is incompatible with the laws of Germany or is impossible of performance by reason of internal practice and procedure or practical difficulties in Germany, it is respectfully requested that the evidence be taken in such other similar manner as is provided by the laws of Germany for the formal taking of oral testimony.

It is respectfully requested that: (a) the witness' oral evidence be taken under oath or affirmation administered by an appropriate authority or person authorized to administer oaths under the laws of Germany; (b) the taking of testimony proceeds in the English language upon direct oral examination and cross-examination by counsel for the parties in the pending action, unless the witness requests the testimony be taken in German, in which case counsel for Teradata will provide a translator in this language; (c) the testimony of the witness be reduced to a verbatim transcript by a qualified reporter or shorthand writer; (d) upon completion of the taking of testimony, the transcript be sworn to by the witness and returned to the person(s) named in Section 3 above; and (e) the parties may videotape the taking of testimony. In addition, it is respectfully requested that the Central Authority of Germany serve the witness with the notice in accordance with German law.

Confidentiality of Testimony:

All confidential information disclosed in this litigation is subject to a Stipulated Protective Order ("Protective Order," attached as Exhibit 1), which is designed to protect producing entities from the unauthorized use and/or disclosure of trade secrets and other proprietary information. The Protective Order provides, "[a]ny non-party producing documents or information in the Litigation may avail themselves of the confidential treatment provided for in this Protective Order by signing a copy of this Protective Order and serving same on all counsel of record." (Exhibit 1 at ¶ 29.) The Protective Order includes within its scope any information revealed through deposition testimony. (*Id.* at ¶ 2.) Accordingly, this Court has expressly given Infolytics AG and its employees and managers the right to designate any confidential information given in response to this Request as "HIGHLY CONFIDENTIAL" or "EXTERNAL COUNSEL ONLY" under the Protective Order. Access to information designated as "HIGHLY CONFIDENTIAL" is generally limited to two in-house counsel from each party, whereas information designated as "EXTERNAL COUNSEL ONLY" may be accessed by each party's outside counsel of record and others closely involved in the litigation proceedings. (*Id.* at ¶ 7.)

**14. REQUEST FOR NOTIFICATION OF TIME AND PLACE FOR THE EXECUTION OF THE REQUEST AND IDENTITY AND ADDRESS OF PERSONS TO BE NOTIFIED:**

In the absence of an agreement for Messrs. Anhaus, Fekkes, Hoehe, Janowitz, Scheurer, and Brunnbauer to appear outside Germany for giving testimony in this matter, it is respectfully requested that the Central Authority of Germany establish the time for the taking of testimony during the month of June 2020, or a later time as agreed by the parties. The parties will coordinate with each other and the witness to establish a mutually convenient schedule. The parties have agreed that for each witness, Teradata will first examine the witness and SAP will have an equal amount of time to cross-examine the witness. When the time and place for the execution of the request are designated by the Competent Authority, notification is requested to be delivered to the following:

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USA

Tharan Gregory Lanier  
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San Francisco, CA 94104  
USA

15 and 16. NOT APPLICABLE.

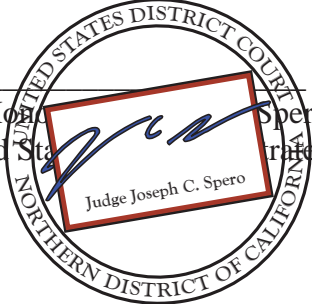
17. FEES AND COSTS:

The fees and costs, if any, which are reimbursable under the second paragraph of Article 14 or under Article 26 of the Convention will be borne by Teradata.

DATE OF REQUEST: April 28, 2020

SIGNATURE AND SEAL OF THE REQUESTING AUTHORITY:

The Hon. Judge Joseph C. Spero  
United States District Judge



# **EXHIBIT 1**

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TERADATA OPERATIONS, INC.

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Attorneys for Defendants  
SAP SE,  
SAP AMERICA, INC., AND  
SAP LABS, LLC

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

TERADATA CORPORATION, TERADATA  
US, INC., and TERADATA OPERATIONS,  
INC.,

Plaintiffs,

v.

SAP SE, SAP AMERICA, INC., and SAP  
LABS, LLC,

Defendants.

Case No. 3:18-cv-03670-WHO (EDL)

**STIPULATED [PROPOSED]  
PROTECTIVE ORDER**

1       1.     PURPOSES AND LIMITATIONS

2           Disclosure and discovery activity in this action are likely to involve production of  
3 confidential, proprietary, or private information for which special protection from public  
4 disclosure and from use for any purpose other than prosecuting this litigation may be warranted.  
5 Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated  
6 Protective Order. The parties acknowledge that this Order does not confer blanket protections on  
7 all disclosures or responses to discovery and that the protection it affords from public disclosure  
8 and use extends only to the limited information or items that are entitled to confidential treatment  
9 under the applicable legal principles. The parties further acknowledge, as set forth in Section  
10 13.4, below, that this Stipulated Protective Order does not entitle them to file confidential  
11 information under seal; Civil Local Rule 79-5 sets forth the procedures that must be followed and  
12 the standards that will be applied when a party seeks permission from the court to file material  
13 under seal.

14       2.     DEFINITIONS

15           2.1    Challenging Party: a Party or Non-Party that challenges the designation of  
16 information or items under this Order.

17           2.2    “CONFIDENTIAL” Information or Items: information (regardless of how it is  
18 generated, stored or maintained) or tangible things that qualify for protection under Federal Rule  
19 of Civil Procedure 26(c).

20           2.3    Counsel (without qualifier): Outside Counsel of Record and House Counsel (as  
21 well as their support staff).

22           2.4    Designated House Counsel: House Counsel who seek access to “HIGHLY  
23 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” information in this matter who have signed  
24 the “Acknowledgment and Agreement to Be Bound.” Each side (Plaintiffs on one hand and  
25 Defendants on the other) may designate up to—but no more than—four (4) House Counsel as  
26 Designated House Counsel in this litigation.

27           2.5    Designating Party: a Party or Non-Party that designates information or items that it  
28 produces in disclosures or in responses to discovery as “CONFIDENTIAL” or “HIGHLY

CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE”.

2.6 Disclosure or Discovery Material: all items or information, regardless of the medium or manner in which it is generated, stored, or maintained (including, among other things, testimony, transcripts, and tangible things), that are produced or generated in disclosures or responses to discovery in this matter.

2.7 Expert: a person with specialized knowledge or experience in a matter pertinent to the litigation who (1) has been retained by a Party or its counsel to serve as an expert witness or as a consultant in this action, (2) is not a current employee of a Party or of a Party’s competitor (for avoidance of doubt this subsection (2) applies only to a current employee and not to a current consultant of a Party’s competitor), and (3) at the time of retention, is not anticipated to become an employee of a Party or of a Party’s competitor.

2.8 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” Information or Items: extremely sensitive “Confidential Information or Items,” disclosure of which to another Party or Non-Party would create a substantial risk of serious harm that could not be avoided by less restrictive means.

2.9 “HIGHLY CONFIDENTIAL – SOURCE CODE” Information or Items: extremely sensitive “Confidential Information or Items” representing computer code, or detailed descriptions of computer code that might reveal the substance of computer code, that define or otherwise describe in detail the algorithms or structure of software or hardware designs, disclosure of which to another Party or Non-Party would create a substantial risk of serious harm that could not be avoided by less restrictive means.

2.10 House Counsel: attorneys who are employees of a party to this action. House Counsel does not include Outside Counsel of Record or any other outside counsel.

2.11 Non-Party: any natural person, partnership, corporation, association, or other legal entity not named as a Party to this action.

1           2.12 Outside Counsel of Record: attorneys who are not employees of a party to this  
2 action but are retained to represent or advise a party to this action and have appeared in this action  
3 on behalf of that party or are affiliated with a law firm which has appeared on behalf of that party.

4           2.13 Party: any party to this action, including all of its officers, directors, employees,  
5 consultants, retained experts, predecessors in interest, successors, subrogors, subsidiaries, parent  
6 entities, affiliates, divisions, and Outside Counsel of Record (and their support staffs).

7           2.14 Producing Party: a Party or Non-Party that produces Disclosure or Discovery  
8 Material in this action.

9           2.15 Professional Vendors: persons or entities that provide litigation support services  
10 (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations, and  
11 organizing, storing, or retrieving data in any form or medium) and their employees and  
12 subcontractors.

13           2.16 Protected Material: any Disclosure or Discovery Material that is designated as  
14 “CONFIDENTIAL,” as “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” or as  
15 “HIGHLY CONFIDENTIAL – SOURCE CODE.”

16           2.17 Receiving Party: a Party that receives Disclosure or Discovery Material from a  
17 Producing Party.

### 18       3. SCOPE

19           The protections conferred by this Stipulation and Order cover not only Protected Material  
20 (as defined above), but also (1) any information copied or extracted from Protected Material that  
21 might reveal Protected Material; (2) all copies, excerpts, summaries, or compilations of Protected  
22 Material that might reveal Protected Material; and (3) any testimony, conversations, or  
23 presentations by Parties or their Counsel that might reveal Protected Material. However, the  
24 protections conferred by this Stipulation and Order do not cover the following information: (a)  
25 any information that is in the public domain at the time of disclosure to a Receiving Party or  
26 becomes part of the public domain after its disclosure to a Receiving Party as a result of  
27 publication not involving a violation of this Order, including becoming part of the public record  
28 through trial or otherwise; and (b) any information known to the Receiving Party prior to the

disclosure or obtained by the Receiving Party after the disclosure from a source who obtained the information lawfully and under no obligation of confidentiality to the Designating Party. Further, nothing in this Stipulation and Order shall limit Outside Counsel of Record or Designated House Counsel for a Party from providing general advice that does not disclose specific details of the Protected Material. Any use of Protected Material at trial shall be governed by a separate agreement or order.

4. DURATION

Even after final disposition of this litigation, the confidentiality obligations imposed by this Order shall remain in effect until a Designating Party agrees otherwise in writing or a court order otherwise directs. The Court shall retain jurisdiction after final disposition of this matter to hear and resolve any disputes arising out of this Stipulated Protective Order. Final disposition shall be deemed to be the later of (1) dismissal of all claims and defenses in this action, with or without prejudice; and (2) final judgment herein after the completion and exhaustion of all appeals, rehearings, remands, trials, or reviews of this action, including the time limits for filing any motions or applications for extension of time pursuant to applicable law.

5. DESIGNATING PROTECTED MATERIAL

5.1 Exercise of Restraint and Care in Designating Material for Protection. Each Party or Non-Party that designates information or items for protection under this Order must take care to limit any such designation to specific material that qualifies under the appropriate standards.

Mass, indiscriminate, or routinized designations are prohibited. Designations that are shown to be clearly unjustified or that have been made for an improper purpose (e.g., to unnecessarily encumber or retard the case development process or to impose unnecessary expenses and burdens on other parties) expose the Designating Party to sanctions.

If it comes to a Designating Party's attention that information or items that it designated for protection do not qualify for protection at all or do not qualify for the level of protection initially asserted, that Designating Party must promptly notify all other parties that it is withdrawing the mistaken designation.

1           5.2    Manner and Timing of Designations. Except as otherwise provided in this Order  
2 (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered,  
3 Disclosure or Discovery Material that qualifies for protection under this Order must be clearly so  
4 designated before the material is disclosed or produced.

5           Designation in conformity with this Order requires:

6           (a) For information in documentary form (e.g., paper or electronic documents, but  
7 excluding transcripts of depositions or other pretrial or trial proceedings), that the Producing  
8 Party affix the legend “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL – ATTORNEYS’  
9 EYES ONLY,” or “HIGHLY CONFIDENTIAL – SOURCE CODE” to each document that  
10 contains Protected Material.

11           A Party or Non-Party that makes original documents or materials available for inspection  
12 need not designate them for protection until after the inspecting Party has indicated which  
13 material it would like copied and produced. During the inspection and before the designation, all  
14 of the material made available for inspection shall be deemed “HIGHLY CONFIDENTIAL –  
15 ATTORNEYS’ EYES ONLY.” After the inspecting Party has identified the documents it wants  
16 copied and produced, the Producing Party must determine which documents, or portions thereof,  
17 qualify for protection under this Order. Then, before producing the specified documents, the  
18 Producing Party must affix the appropriate legend (“CONFIDENTIAL,” “HIGHLY  
19 CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” or “HIGHLY CONFIDENTIAL – SOURCE  
20 CODE”) to each document that contains Protected Material.

21           (b) for testimony given in deposition or in other pretrial or trial proceedings, that the  
22 Designating Party may identify on the record, before the close of the deposition, hearing, or other  
23 proceeding, all protected testimony and may further specify any portions of the testimony that  
24 qualify as “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY,”  
25 or “HIGHLY CONFIDENTIAL – SOURCE CODE.” Alternatively, within 30 days of receipt of a  
26 transcript or recording of a deposition or other pretrial or trial proceeding, the Designating Party  
27 may designate such transcript or recording or any portion thereof as “CONFIDENTIAL,”  
28 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” or “HIGHLY CONFIDENTIAL

1 – SOURCE CODE” by notifying all Parties, in writing, of the specific pages and lines of the  
2 transcript or recording that should be treated as “CONFIDENTIAL,” “HIGHLY  
3 CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” or “HIGHLY CONFIDENTIAL – SOURCE  
4 CODE.” All transcripts or recordings of depositions or other pretrial or trial proceedings shall be  
5 treated as “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” for 30 days after receipt  
6 of the transcript or recording, or until written notice of a designation is received, whichever  
7 occurs first. In the case of a Non-Party witness, testimony can be designated as  
8 “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” or  
9 “HIGHLY CONFIDENTIAL – SOURCE CODE” by a Party, the Non-Party witness, or upon  
10 agreement of the Parties.

11 Transcript pages containing Protected Material must be separately bound by the court  
12 reporter, who must affix to the top of each such page the legend “CONFIDENTIAL,” “HIGHLY  
13 CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” or “HIGHLY CONFIDENTIAL – SOURCE  
14 CODE” as instructed by the Designating Party. In the event that the deposition is videotaped, the  
15 original and all copies of the videotape shall be marked by the video technician to indicate that  
16 the content of the videotape is subject to this Stipulated Protective Order, substantially along the  
17 lines of “This videotape contains confidential testimony used in this case and is not to be viewed  
18 or the contents thereof to be displayed or revealed except pursuant to the terms of the operative  
19 Stipulated Protective Order in this matter or pursuant to the written stipulation of the Parties.”

20 Parties shall give the other parties notice if they reasonably expect a deposition, hearing or  
21 other proceeding to include Protected Material so that the other parties can ensure that only  
22 authorized individuals who have signed the “Acknowledgment and Agreement to Be Bound”  
23 (Exhibit A) are present at those proceedings. The use of a document as an exhibit at a deposition  
24 shall not in any way affect its designation as “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL –  
25 ATTORNEYS’ EYES ONLY,” or “HIGHLY CONFIDENTIAL – SOURCE CODE.”

26 (c) for electronic files and documents produced in native electronic format, that the  
27 Designating Party append to the file names or designators information indicating whether the file  
28 contains “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”

1 material, or shall use any other reasonable method for so designating the Protected Material  
2 produced in native electronic format. When electronic files or documents produced in native  
3 electronic format are printed for use at deposition, a court proceeding, a court filing, or for  
4 provision to an Expert, the Party printing the electronic files or documents shall affix a legend to  
5 the printed file or document corresponding to the appropriate designation and including the  
6 production number and designation associated with the native file.

7 (d) for information produced in some form other than documentary and for any other  
8 tangible items, that the Producing Party affix in a prominent place on the exterior of the container  
9 or containers in which the information or item is stored the legend "CONFIDENTIAL,"  
10 "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY," or "HIGHLY CONFIDENTIAL  
11 – SOURCE CODE." If only a portion or portions of the information or item warrant protection,  
12 the Producing Party, to the extent practicable, shall identify the protected portion(s) and specify  
13 the level of protection being asserted.

14 5.3 Inadvertent Failures to Designate. If timely corrected upon discovery of an  
15 inadvertent failure to mark information as qualified information, an inadvertent failure to  
16 designate qualified information or items does not, standing alone, waive the Designating Party's  
17 right to secure protection under this Order for such material. Upon timely correction of a  
18 designation, the Receiving Party must make reasonable efforts to assure that the material is  
19 treated in accordance with the provisions of this Order.

## 20 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

21 6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation of  
22 confidentiality at any time. A Party does not waive its right to challenge a confidentiality  
23 designation by electing not to mount a challenge promptly after the original designation is  
24 disclosed.

25 6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution  
26 process by providing written notice of each designation it is challenging and describing the basis  
27 for each challenge. To avoid ambiguity as to whether a challenge has been made, the written  
28 notice must recite that the challenge to confidentiality is being made in accordance with this

1 specific paragraph of the Protective Order. The parties shall attempt to resolve each challenge in  
2 good faith and must begin the process by conferring directly (in voice to voice dialogue; other  
3 forms of communication are not sufficient) within 14 days of the date of service of notice. In  
4 conferring, the Challenging Party must explain the basis for its belief that the confidentiality  
5 designation was not proper and must give the Designating Party an opportunity to review the  
6 designated material, to reconsider the circumstances, and, if no change in designation is offered,  
7 to explain the basis for the chosen designation. A Challenging Party may proceed to the next  
8 stage of the challenge process only if it has engaged in this meet and confer process first or  
9 establishes that the Designating Party is unwilling to participate in the meet and confer process in  
10 a timely manner.

11       6.3     Judicial Intervention. If the Parties cannot resolve a challenge without court  
12 intervention, the Designating Party shall file and serve a motion to retain confidentiality under  
13 Civil Local Rule 7 (and in compliance with Civil Local Rule 79-5, if applicable) within 14 days  
14 of the parties agreeing that the meet and confer process will not resolve their dispute. Each such  
15 motion must be accompanied by a competent declaration affirming that the movant has complied  
16 with the meet and confer requirements imposed in the preceding paragraph. Failure by the  
17 Designating Party to make such a motion including the required declaration within the applicable  
18 time shall automatically waive the confidentiality designation for each challenged designation. In  
19 addition, the Challenging Party may file a motion challenging a confidentiality designation at any  
20 time if there is good cause for doing so, including a challenge to the designation of a deposition  
21 transcript or any portions thereof. Any motion brought pursuant to this provision must be  
22 accompanied by a competent declaration affirming that the movant has complied with the meet  
23 and confer requirements imposed by the preceding paragraph.

24       The burden of persuasion in any such challenge proceeding shall be on the Designating  
25 Party. Frivolous challenges and those made for an improper purpose (e.g., to harass or impose  
26 unnecessary expenses and burdens on other parties) may expose the Challenging Party to  
27 sanctions. Unless the Designating Party has waived the confidentiality designation by failing to  
28 file a motion to retain confidentiality as described above, all parties shall continue to afford the

1 material in question the level of protection to which it is entitled under the Producing Party's  
2 designation until the court rules on the challenge.

3 7. ACCESS TO AND USE OF PROTECTED MATERIAL

4 7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed or  
5 produced by another Party or by a Non-Party in connection with this case only for prosecuting,  
6 defending, or attempting to settle this litigation. A Receiving Party may not use Protected  
7 Material for any other purpose, including but not limited to the preparation or prosecution of  
8 patents and patent applications, challenging a patent before a domestic or foreign agency  
9 (including, but not limited to, a reissue protest, ex parte reexamination, or inter partes review  
10 proceeding), or in connection with any other litigation or agency proceeding. Such Protected  
11 Material may be disclosed only to the categories of persons and under the conditions described in  
12 this Order. When the litigation has been terminated, a Receiving Party must comply with the  
13 provisions of section 14 below (FINAL DISPOSITION).

14 Protected Material must be stored and maintained by a Receiving Party with a vendor in  
15 the United States and in a secure manner that ensures that access is limited to the persons  
16 authorized under this Stipulated Protective Order. Protected Material may be accessed and  
17 reviewed outside of the United States.

18 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise ordered  
19 by the court or permitted in writing by the Designating Party, a Receiving Party may disclose any  
20 information or item designated "CONFIDENTIAL" only to:

21 (a) the Receiving Party's Outside Counsel of Record in this action, as well as employees  
22 of said Outside Counsel of Record to whom it is reasonably necessary to disclose the information  
23 for this litigation;

24 (b) the officers, directors, and employees (including House Counsel) of the Receiving  
25 Party to whom disclosure is reasonably necessary for this litigation and who have signed the  
26 "Acknowledgment and Agreement to Be Bound" (Exhibit A);

(c) Experts (as defined in this Order) of the Receiving Party to whom disclosure is reasonably necessary for this litigation and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

(d) the Court and its personnel;

(e) court reporters or videographers retained to record testimony taken in this action, and their respective staff;

(f) Professional jury or trial consultants, mock jurors, and Professional Vendors to whom disclosure is reasonably necessary for this litigation and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

(g) during their depositions, witnesses in the action to whom disclosure is reasonably necessary, unless otherwise agreed by the Designating Party or ordered by the Court. Pages of transcribed deposition testimony or exhibits to depositions that reveal Protected Material must be separately bound by the court reporter and may not be disclosed to anyone except as permitted under this Stipulated Protective Order.

(h) any mutually agreed upon mediator or settlement officer, and his or her supporting personnel;

(i) the author or recipient of a document containing the information or a custodian or other person who otherwise possessed or knew the information; and

(j) any other person upon Court order or upon prior written consent of the Designating Party.

7.3 Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” and “HIGHLY CONFIDENTIAL – SOURCE CODE” Information or Items. Unless otherwise ordered by the court or permitted in writing by the Designating Party, a Receiving Party may disclose any information or item designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE” only to:

(a) the Receiving Party’s Outside Counsel of Record in this action, as well as employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose the information for this litigation;

(b) Designated House Counsel of the Receiving Party (i) to whom disclosure is reasonably necessary for this litigation, (ii) who has signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A), and (iii) as to whom the procedures set forth in paragraph 7.4(a)-(c), below, have been followed;<sup>1</sup>

(c) Experts of the Receiving Party (1) to whom disclosure is reasonably necessary for this litigation, (2) who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A), and (3) as to whom the procedures set forth in paragraph 7.4(a)-(c), below, have been followed;

(d) the Court and its personnel;

(e) court reporters or videographers retained to record testimony taken in this action and their respective staff,

(f) professional jury or trial consultants, mock jurors, and Professional Vendors to whom disclosure is reasonably necessary for this litigation and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

(g) the author or recipient of a document containing the information or a custodian or other person who otherwise possessed or knew the information; and

(h) any other person upon Court order or upon prior written consent of the Designating Party.

7.4 Procedures for Approving or Objecting to Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE” Information or Items to Designated House Counsel or Experts.

(a) Unless otherwise ordered by the court or agreed to in writing by the Designating Party, a Receiving Party that seeks to disclose to Designated House Counsel or an Expert (as defined in this Order) any information or item that has been designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE

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<sup>1</sup> This Order contemplates that Designated House Counsel shall not have access to any information or items designated “HIGHLY CONFIDENTIAL – SOURCE CODE” with the exception of source code incorporated into expert reports and court filings.

CODE” pursuant to paragraph 7.3(c) first must make a written request to the Designating Party that (1) identifies the general categories of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE” information that the Receiving Party seeks permission to disclose to Designated House Counsel or the Expert, (2) sets forth the full name of the Designated House Counsel or Expert and the city and state of his or her primary residence, (3) for an Expert attaches a copy of the Expert’s current resume, (4) for an Expert identifies the Expert’s current employer(s), (5) for an Expert identifies each person or entity from whom the Expert has received compensation or funding for work in his or her areas of expertise or to whom the expert has provided professional services, including in connection with a litigation, at any time during the preceding five years,<sup>2</sup> and (6) for an Expert identifies (by name and number of the case, filing date, and location of court) any litigation in connection with which the Expert has offered expert testimony, including through a declaration, report, or testimony at a deposition or trial, during the preceding five years.

(b) A Party that makes a request and provides the information specified in Paragraph (a) may disclose the subject Protected Material to the identified Designated House Counsel or Expert unless, within 14 days of delivering the request, the Party receives a written objection from the Designating Party. Any such objection must set forth in detail the grounds on which it is based.

(c) A Party that receives a timely written objection under Paragraph (b) must meet and confer with the Designating Party (through direct voice to voice dialogue) to try to resolve the matter by agreement within seven days of the written objection. If no agreement is reached, the Party seeking to make the disclosure to the Designated House Counsel or Expert may file a motion as provided in Civil Local Rule 7 (and in compliance with Civil Local Rule 79-5, if applicable) seeking permission from the court to do so. Any such motion must describe the circumstances with specificity, set forth in detail the reasons why the disclosure to the Designated

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<sup>2</sup> If the Expert believes any of this information is subject to a confidentiality obligation to a third-party, then the Expert should provide whatever information the Expert believes can be disclosed without violating any confidentiality agreements, and the Party seeking to disclose to the Expert shall be available to meet and confer with the Designating Party regarding any such engagement.

1 House Counsel or Expert is reasonably necessary, assess the risk of harm that the disclosure  
2 would entail, and suggest any additional means that could be used to reduce that risk. In addition,  
3 any such motion must be accompanied by a competent declaration describing the parties' efforts  
4 to resolve the matter by agreement (i.e., the extent and the content of the meet and confer  
5 discussions) and setting forth the reasons advanced by the Designating Party for its refusal to  
6 approve the disclosure.

7 In any such proceeding, the Party opposing disclosure to the Designated House Counsel or  
8 Expert shall bear the burden of proving that the risk of harm that the disclosure would entail  
9 (under the safeguards proposed) outweighs the Receiving Party's need to disclose the Protected  
10 Material to its Designated House Counsel or Expert.

11 7.5 Disclosure of Statements Pursuant to Cal. Civ. Code section 2019.210.  
12 Notwithstanding any other provision of this Stipulated Protective Order, Defendants may  
13 disclose, to four non-attorney employees of Defendants to be identified, with the appropriate  
14 technical and product background to assist in defense of Teradata's claims and who have agreed  
15 to the "Acknowledgment and Agreement to Be Bound" (Exhibit A), the following: "Plaintiffs  
16 Teradata Corporation, Teradata US, Inc., and Teradata Operations, Inc.'s List of Asserted Trade  
17 Secrets Pursuant to Cal. Cod. Civ. Proc. Section 2019.210" served on December 21, 2018, any  
18 subsequent disclosure by Plaintiffs pursuant to section 2019.210, and any documents or text  
19 explicitly referenced in the Section 2019.210 List, including Teradata's Orange  
20 Books. Defendants shall identify each such non-attorney employee to Plaintiffs at least 14 days  
21 in advance of disclosure to that employee, and if Plaintiffs object, the procedure set forth in  
22 section 7.4 of this Protective Order shall apply; provided, however, that involvement of the  
23 employee in developing what Teradata believes are competing products shall not by itself be a  
24 ground for objection. Should Defendants subsequently believe that disclosure to additional non-  
25 attorney employees is warranted, both sides will discuss in good faith adding a proportionate and  
26 reasonable number of additional non-attorney employees. To the extent an agreement cannot be  
27 reached, the parties will seek guidance from the Court.  
28

1       8.     SOURCE CODE

2           (a) A Producing Party may designate source code as “HIGHLY CONFIDENTIAL -  
3 SOURCE CODE” for any information or items identified in Paragraph 2.9 if they comprise or  
4 include confidential, proprietary, or trade secret source code.

5           (b) Protected Material designated as “HIGHLY CONFIDENTIAL – SOURCE CODE”  
6 shall be subject to all of the protections afforded to “HIGHLY CONFIDENTIAL –  
7 ATTORNEYS’ EYES ONLY” information and may be disclosed only to the individuals to  
8 whom “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” information may be  
9 disclosed, as set forth in Paragraphs 7.3 and 7.4.

10          (c) Protected Material designated as “HIGHLY CONFIDENTIAL – SOURCE CODE”  
11 shall be made available for inspection during normal business hours or at other mutually  
12 agreeable times at two offices of the Producing Party’s counsel or at other mutually agreed upon  
13 locations, in a format allowing it to be reasonably reviewed and searched. Such material shall be  
14 made available for inspection in a secured room on a secured computer without Internet access or  
15 network access to other computers, and the Receiving Party shall not copy, remove, or otherwise  
16 transfer any portion of the source code onto any recordable media or recordable device. The  
17 Producing Party may visually monitor the activities of the Receiving Party’s representatives  
18 during any HIGHLY CONFIDENTIAL – SOURCE CODE review, but only to ensure that there  
19 is no unauthorized recording, copying, or transmission of the information designated as HIGHLY  
20 CONFIDENTIAL – SOURCE CODE.<sup>3</sup>

21          (d) The Receiving Party may request paper copies of limited portions of source code that  
22 are reasonably necessary in this action for the preparation of court filings, pleadings, expert  
23 reports, or other papers, or for deposition or trial, but shall not request paper copies for the  
24 purposes of reviewing the source code other than electronically as set forth in paragraph (c) in the  
25

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26  
27       <sup>3</sup> It may be appropriate under certain circumstances to require the Receiving Party to keep a paper log indicating the names of any  
28 individuals inspecting the HIGHLY CONFIDENTIAL – SOURCE CODE information and dates and times of inspection, and the  
names of any individuals to whom paper copies of portions of source code are provided.

1 first instance. The Producing Party may challenge the amount of source code requested in hard  
2 copy form pursuant to the dispute resolution procedure and timeframes set forth in Paragraph 6  
3 whereby the Producing Party is the “Challenging Party” and the Receiving Party is the  
4 “Designating Party” for purposes of dispute resolution. The Producing Party shall print the  
5 identified source code on yellow (or other non-white) colored paper. The Producing Party shall  
6 clearly label each page with bates numbers and the label “HIGHLY CONFIDENTIAL -  
7 SOURCE CODE.”

8 (e) The Receiving Party shall maintain a record of any individual who has inspected any  
9 portion of the source code in electronic or paper form. The Receiving Party shall maintain all  
10 paper copies of any printed portions of the source code in a secured, locked area. The Receiving  
11 Party shall not create any electronic or other images of the paper copies and shall not convert the  
12 paper copies into an electronic format. The Receiving Party may be permitted to include short  
13 excerpts of source code (20 lines or less) in court filings or expert reports so long as these  
14 documents are designated “HIGHLY CONFIDENTIAL – SOURCE CODE.” The Receiving  
15 Party shall only make additional paper copies if such additional copies are (1) necessary to  
16 prepare court filings, pleadings, or other papers (including a testifying expert’s expert report), (2)  
17 necessary for deposition, or (3) otherwise necessary for the preparation of its case. Any paper  
18 copies used during a deposition shall be retrieved by the Producing Party at the end of each day  
19 and must not be given to or left with a court reporter or any other unauthorized individual.<sup>4</sup> The  
20 Receiving Party may request that the Producing Party bring a source code computer to a  
21 deposition; the Producing Party shall comply unless its compliance would be unduly burdensome.

22 9. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER  
23 LITIGATION

24 If a Party is served with a subpoena or a court order issued in other litigation that compels  
25 \_\_\_\_\_

26 <sup>4</sup> The nature of the information designated as “HIGHLY CONFIDENTIAL – SOURCE CODE” at issue in a particular case may  
27 warrant additional protections or restrictions. For example, it may be appropriate under certain circumstances to require the  
28 Receiving Party to provide notice to the Producing Party before including “HIGHLY CONFIDENTIAL – SOURCE CODE”  
information in a court filing, pleading, or expert report.

1 disclosure of any information or items designated in this action as “CONFIDENTIAL” or  
2 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL –  
3 SOURCE CODE” that Party must:

4 (a) promptly notify in writing the Designating Party. Such notification shall include a  
5 copy of the subpoena or court order;

6 (b) promptly notify in writing the party who caused the subpoena or order to issue in the  
7 other litigation that some or all of the material covered by the subpoena or order is subject to this  
8 Protective Order. Such notification shall include a copy of this Stipulated Protective Order; and

9 (c) cooperate with respect to all reasonable procedures sought to be pursued by the  
10 Designating Party whose Protected Material may be affected.<sup>5</sup>

11 If the Designating Party timely seeks a protective order, the Party served with the  
12 subpoena or court order shall not produce any information designated in this action as  
13 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or  
14 “HIGHLY CONFIDENTIAL – SOURCE CODE” before a determination by the court from  
15 which the subpoena or order issued, unless the Party has obtained the Designating Party’s  
16 permission. The Designating Party shall bear the burden and expense of seeking protection in that  
17 court of its confidential material – and nothing in these provisions should be construed as  
18 authorizing or encouraging a Receiving Party in this action to disobey a lawful directive from  
19 another court.

20 10. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN THIS  
21 LITIGATION

22 (a) The terms of this Order are applicable to information produced by a Non-Party in this  
23 action and designated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’  
24 EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE.” Such information produced

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25  
26  
27 <sup>5</sup> The purpose of imposing these duties is to alert the interested parties to the existence of this Protective Order and to afford the  
28 Designating Party in this case an opportunity to try to protect its confidentiality interests in the court from which the subpoena or  
order issued.

1 by Non-Parties in connection with this litigation is protected by the remedies and relief provided  
2 by this Stipulated Protective Order. Nothing in these provisions should be construed as  
3 prohibiting a Non-Party from seeking additional protections.

4 (b) In the event that a Party is required, by a valid discovery request, to produce a Non-  
5 Party's confidential information in its possession, and the Party is subject to an agreement with  
6 the Non-Party not to produce the Non-Party's confidential information, then the Party shall:

7 1. promptly notify in writing the Requesting Party and the Non-Party that  
8 some or all of the information requested is subject to a confidentiality agreement with a Non-  
9 Party;

10 2. promptly provide the Non-Party with a copy of the Stipulated Protective  
11 Order in this litigation, the relevant discovery request(s), and a reasonably specific description of  
12 the information requested; and

13 3. make the information requested available for inspection by the Non-Party.

14 (c) If the Non-Party fails to object or seek a protective order from this court within 14  
15 days of receiving the notice and accompanying information, the Receiving Party may produce the  
16 Non-Party's confidential information responsive to the discovery request. If the Non-Party timely  
17 seeks a protective order, the Receiving Party shall not produce any information in its possession  
18 or control that is subject to the confidentiality agreement with the Non-Party before a  
19 determination by the court. Absent a court order to the contrary, the Non-Party shall bear the  
20 burden and expense of seeking protection in this court of its Protected Material.

21 11. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

22 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected  
23 Material to any person or in any circumstance not authorized under this Stipulated Protective  
24 Order, the Receiving Party must immediately (a) notify in writing the Designating Party of the  
25 unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the  
26 Protected Material, (c) inform the person or persons to whom unauthorized disclosures were  
27 made of all the terms of this Order, and (d) request such person or persons to execute the  
28 "Acknowledgment and Agreement to Be Bound" that is attached hereto as Exhibit A.

1 Unauthorized or inadvertent disclosure does not change the status of Protected Material or waive  
2 the right to maintain the disclosed document or information as Protected Material.

3 12. PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED MATERIAL

4 Nothing in this Stipulated Protective Order shall require disclosure of information which  
5 is protected by the attorney-client privilege, work product immunity, or other privilege or  
6 immunity. The production of privileged or work-product-protected documents, electronically  
7 stored information (“ESI”) or information is not a waiver of the privilege or protection from  
8 discovery in this case or in any other federal or state proceeding, except when the producing party  
9 provides notice that it is intentionally and knowingly waiving a privilege or immunity, that  
10 privilege or immunity shall be waived as to this case. This Order shall be interpreted to provide  
11 the maximum protection allowed by Federal Rule of Evidence 502(d). For the avoidance of any  
12 doubt and for purposes of the application of this paragraph, the parties agree that Federal Rule of  
13 Evidence 502(b) does not apply.

14 To promote the just, speedy, and inexpensive determination of this action pursuant to  
15 Federal Rule of Civil Procedure 1, the parties agree to use best efforts to comply with the  
16 following standard: If a Receiving Party, upon review of Disclosure or Discovery Material  
17 produced to it, becomes aware that any portion of such Disclosure or Discovery Material is  
18 protected by the attorney-client privilege, work product immunity, or other privilege or immunity,  
19 the Receiving Party shall promptly notify the Producing Party of the specific Materials which  
20 could be so considered and will not use such Materials for any purpose until the issue has been  
21 resolved by agreement of the Parties or by order of the Court. Inadvertent failure to comply with  
22 this standard shall not be grounds for relief.

23 When a Producing Party gives notice to a Receiving Party that certain inadvertently  
24 produced Disclosure or Discovery Material is subject to a claim of privilege or other protection,  
25 the obligations of the Receiving Party are those set forth in Federal Rule of Civil Procedure  
26 26(b)(5)(B). Each Receiving Party must immediately return such Disclosure or Discovery  
27 Material and all copies to the Producing Party, except for any pages containing privileged  
28 markings by the Receiving Party, which shall instead be destroyed and certified as such by the

1 Receiving Party to the Producing Party.

2 Nothing contained herein is intended to or shall serve to limit a party's right to conduct a  
3 review of documents, ESI, or information (including metadata) for relevance, responsiveness  
4 and/or segregation of privileged and/or protected information before production. This provision  
5 is not intended to modify whatever procedure may be established in an e-discovery order that  
6 provides for production without prior privilege review.

7 13. MISCELLANEOUS

8 13.1 Right to Further Relief. Nothing in this Order abridges the right of any person to  
9 seek its modification by the court in the future.

10 13.2 Right to Assert Other Objections. By stipulating to the entry of this Protective  
11 Order no Party waives any right it otherwise would have to object to disclosing or producing any  
12 information or item on any ground not addressed in this Stipulated Protective Order. Similarly, no  
13 Party waives any right to object on any ground to use in evidence of any of the material covered  
14 by this Protective Order.

15 13.3 Export Control. Disclosure of Protected Material shall be subject to all applicable  
16 laws and regulations relating to the export of technical data contained in such Protected Material,  
17 including the release of such technical data to foreign persons or nationals in the United States or  
18 elsewhere. The Producing Party shall be responsible for identifying any such controlled technical  
19 data, and the Receiving Party shall take measures necessary to ensure compliance.

20 13.4 Filing Protected Material. Without written permission from the Designating Party  
21 or a court order secured after appropriate notice to all interested persons, a Party may not file in  
22 the public record in this action any Protected Material. A Party that seeks to file under seal any  
23 Protected Material must comply with Civil Local Rule 79-5. Protected Material may only be filed  
24 under seal pursuant to a court order authorizing the sealing of the specific Protected Material at  
25 issue. Pursuant to Civil Local Rule 79-5, a sealing order will issue only upon a request  
26 establishing that the Protected Material at issue is privileged, protectable as a trade secret, or  
27 otherwise entitled to protection under the law. If a Receiving Party's request to file Protected  
28 Material under seal pursuant to Civil Local Rule 79-5(e) is denied by the court, then the

1 Receiving Party may file the Protected Material in the public record pursuant to Civil Local Rule  
2 79-5(e)(2) unless otherwise instructed by the court.

3 13.5 Computation of Time: The computation of any period of time prescribed or  
4 allowed by this Stipulated Protective Order shall be governed by the provisions for computing  
5 time in Federal Rule of Civil Procedure 6 except as otherwise provided in Civil Local Rule 7.

6 13.6 Successors: This Stipulated Protective Order shall be binding upon the Parties  
7 hereto, their Counsel, and their successors, executors, heirs, assigns, and employees.

8 13.7 Fact of Designation Not Admissible: The fact of designation or failure to  
9 designate Disclosure or Discovery Material as “CONFIDENTIAL” or “HIGHLY  
10 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE  
11 CODE” pursuant to this Stipulated Protective Order shall not be admissible for any purpose in a  
12 trial on the merits or at any other proceeding other than a proceeding arising from or related to  
13 this Stipulated Protective Order.

14 14. FINAL DISPOSITION

15 Within 60 days after the final disposition of this action, as defined in paragraph 4, each  
16 Receiving Party must return all Protected Material to the Producing Party or destroy such  
17 material. As used in this subdivision, “all Protected Material” includes all copies, abstracts,  
18 compilations, summaries, and any other format reproducing or capturing any of the Protected  
19 Material. Whether the Protected Material is returned or destroyed, the Receiving Party must  
20 submit a written certification to the Producing Party (and, if not the same person or entity, to the  
21 Designating Party) by the 60-day deadline that (1) identifies (by category, where appropriate) all  
22 the Protected Material that was returned or destroyed and (2) affirms that the Receiving Party has  
23 not retained any copies, abstracts, compilations, summaries or any other format reproducing or  
24 capturing any of the Protected Material. Notwithstanding this provision, Counsel are entitled to  
25 retain an archival copy of all pleadings, motion papers, trial, deposition, and hearing transcripts,  
26 legal memoranda, correspondence, deposition and trial exhibits, expert reports, attorney work  
27 product, and consultant and expert work product, even if such materials contain Protected  
28 Material. Any such archival copies that contain or constitute Protected Material remain subject to

1 this Protective Order as set forth in Section 4 (DURATION).

2 15. DATA SECURITY

3 Any Party in possession of Discovery Material designated as “CONFIDENTIAL” or  
4 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL –  
5 SOURCE CODE” shall maintain a written information security program that includes reasonable  
6 administrative, technical and physical safeguards designed to protect the security and  
7 confidentiality of such information, protect against any reasonably anticipated threats or hazards  
8 to the security of such information, and protect against unauthorized access to or use of such  
9 information. To the extent a Party does not have an information security program they may  
10 comply with this provision by having the “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –  
11 ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE” Discovery  
12 Material managed by and/or stored with eDiscovery vendors or claims administrators that  
13 maintain such an information security program. If the Receiving Party discovers a breach of  
14 security, including any actual or suspected unauthorized access, relating to another party’s  
15 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or  
16 “HIGHLY CONFIDENTIAL – SOURCE CODE” Discovery Material, the Receiving Party shall:  
17 (1) promptly provide written notice to Designating Party of such breach; (2) investigate and make  
18 reasonable efforts to remediate the effects of the breach, and provide Designating Party with  
19 assurances reasonably satisfactory to Designating Party that such breach shall not recur; and (3)  
20 provide sufficient information about the breach that the Designating Party can reasonably  
21 ascertain the size and scope of the breach. If required by any judicial or governmental request,  
22 requirement or order to disclose such information, the Receiving Party shall take all reasonable  
23 steps to give the Designating Party sufficient prior notice in order to contest such request,  
24 requirement or order through legal means. The Receiving Party agrees to cooperate with the  
25 Designating Party or law enforcement in investigating any such security incident. In any event,  
26 the Receiving Party shall promptly take all necessary and appropriate corrective action to  
27 terminate the unauthorized access.  
28

1 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

2 DATED: May 13, 2019

/s/ Mark Whitaker

MORRISON & FOERSTER LLP

3  
4 Attorneys for Plaintiffs  
5 TERADATA CORP.,  
6 TERADATA US, INC., and  
7 TERADATA OPERATIONS, INC.

8  
9 DATED: May 13, 2019

/s/ Tharan Gregory Lanier

10 JONES DAY  
11 PAUL, WEISS, RIFKIND, WHARTON &  
12 GARRISON LLP

13 Attorneys for Defendants  
14 SAP SE,  
15 SAP AMERICA, INC., and  
16 SAP LABS LLC

17 PURSUANT TO STIPULATION, IT IS SO ORDERED.

18 DATED: May 14, 2019



19 Magistrate Judge Elizabeth B. LaPorte  
20 United States District Judge  
21 Magistrate  
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**ATTESTATION OF E-FILED SIGNATURE**

I, Mark L. Whitaker, am the ECF User whose ID and password are being used to file this Stipulated Proposed Protective Order. In compliance with Local Rule 5-1(i)(3), I hereby attest that the concurrence to the filing of this document has been obtained from each signatory hereto.

Executed this 13th day of May 2019

/s Mark Whitaker  
Mark Whitaker

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, \_\_\_\_\_ [print or type full name], of \_\_\_\_\_  
[print or type full address], declare under penalty of perjury that I have read in its entirety and understand the Stipulated Protective Order that was issued by the United States District Court for the Northern District of California on \_\_\_\_\_ [date] in the case of *Teradata Corporation, et al. v. SAP SE, et al.* Case No. 3:18-cv-03670-WHO (N.D. Cal.). I agree to comply with and to be bound by all the terms of this Stipulated Protective Order and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject to this Stipulated Protective Order to any person or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the Northern District of California for the purpose of enforcing the terms of this Stipulated Protective Order, even if such enforcement proceedings occur after termination of this action.

I hereby appoint \_\_\_\_\_ [print or type full name] of \_\_\_\_\_ [print or type full address and telephone number] as my California agent for service of process in connection with this action or any proceedings related to enforcement of this Stipulated Protective Order.

Date: \_\_\_\_\_

City and State where sworn and signed: \_\_\_\_\_

Printed name: \_\_\_\_\_

Signature: \_\_\_\_\_

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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

TERADATA US, INC., TERADATA  
CORPORATION, and TERADATA  
OPERATIONS, INC.

Plaintiffs,

v.

SAP SE, SAP AMERICA, INC., and SAP  
LABS, LLC,

Defendants.

Case No. 3:18-CV-03670-WHO (JCS)

**STIPULATED [PROPOSED]  
MODIFICATION OF PROTECTIVE  
ORDER**

1 WHEREAS on May 14, 2019, Magistrate Judge Laporte entered the Stipulated Protective  
2 Order in this case. *See* ECF No. 98.

3 WHEREAS all parties have agreed to request modifications to the Stipulated Protective  
4 Order as set for the herein;

5 Accordingly, IT IS HEREBY STIPULATED by and between all parties to the action that  
6 the Stipulated Protective Order shall, subject to the Court's approval, be modified as follows:

7 (1) Paragraph 7.4(c) shall be modified by adding the following to the end of that section:

8 "Once the relevant Expert has been disclosed and the period for objections has  
9 expired or objections have been resolved in favor of permitting disclosure to the  
10 Expert, 'Protected Material' may be disclosed to an Expert's staff and assistants to  
11 whom disclosure is reasonably necessary for this litigation. Prior to disclosure to the  
12 Expert's professional staff (as distinct from clerical support staff), such individuals  
13 shall have signed the Acknowledgment and Agreement to Be Bound."

14 (2) The following shall be added to the Stipulated Protective Order as Paragraph 8(f):

15 "(f) Procedures for Executable Software: Access to agreed-upon executable  
16 instances of software shall be made available only to individuals who have been  
17 approved to view 'HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY'  
18 and/or 'HIGHLY CONFIDENTIAL – SOURCE CODE' information under Paragraph  
19 7.4 of this Stipulated Protective Order. Such executable software shall be made  
20 available in a format that is capable of performing the software's standard intended  
21 functionality and shall include the necessary equipment to allow the Receiving Party  
22 to perform such actions. The Receiving Party may print, copy, or otherwise capture  
23 output from the executable software, such as screenshots or the results of testing done  
24 on the executable software. The immediately preceding sentence does not apply to  
25 source code (including ABAP code) accessible within the executable instances. The  
26 Receiving Party's conduct related to such source code (including ABAP code) will be  
27 limited in the same manner identified in Paragraph 8 of this Stipulated Protective  
28 Order and any printing of such source code (including ABAP code) must be done

through specific requests to the Producing Party as identified in Paragraph 8. The Producing Party shall provide the Receiving Party with the access permissions necessary to perform and test the functions desired to be demonstrated with the executable software. The Producing Party shall not trace or evaluate logs that demonstrate the Receiving Party's specific activities unless it is absolutely necessary for purposes of maintaining the software at which point the Receiving Party will be consulted prior to such actions being taken. The Receiving Party, however, is required to provide to the Producing Party all data, data structures, schema, and other necessary information relied on or used by Receiving Party or its experts in formulating any opinion or evidence offered in the case, in the same form as relied on or used by Receiving Party or its experts. Such information must be provided in a timely manner that allows Producing Party to recreate such actions or tests prior to having to rebut any positions taken related to the actions or tests. The Producing Party shall provide reasonable technical support, but only after the Receiving Party has exhausted all publicly available means of resolving technical issues on its own. The parties shall meet and confer in good faith to make changes or additions to these restrictions and protections if a party finds that the use of the executable software is not adequate or is being abused."

Dated: October 21, 2019

Respectfully submitted,

MORRISON & FOERSTER LLP

By: /s/ Mark L. Whitaker  
Mark L. Whitaker

Counsel for Teradata Corporation, Teradata US, Inc., and Teradata Operations Inc.

Dated: October 21, 2019

JONES DAY

By: /s/ Tharan Gregory Lanier  
Tharan Gregory Lanier

Counsel for SAP SE, SAP America, Inc., and SAP Labs, LLC

1 PURSUANT TO THE STIPULATION, IT IS SO ORDERED:

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3 Dated: October 21, 2019

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Magistrate Judge

